IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 643 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ANUPAM ELECTRIC STORES

Versus

STATE OF GUJARAT

Appearance:

MR DD VYAS for Petitioners

Mr. S.T.Mehta,Addl.Public Prosecutor for Respondent.

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 04/02/2000

ORAL JUDGEMENT

The appellants, were prosecuted relating to the offence punishable under Section 3 of the Essential Commodities Act. The then learned Special Judge, City Sessions Court at Ahmedabad, convicted both the appellants and sentenced the appellant No.1 to pay a fine of Rs. 200/-, while sentenced the appellant No.2 to simple imprisonment for 3 months and a fine of Rs.100/-, in default simple imprisonment for one month.

2. Necessary facts may, in brief, be stated. Purshottam Odhavrai the appellant No.2, Nanakram Jamnadas and Udhavdas Perumal formed the partnership firm and started to carry on the business in the name and style "Anupam Electrical Stores" - appellant No.1 in the present appeal. They were dealing in electrical goods namely wires, plug pins, bulbs, tubes, switches, etc. On 24th December 1986, Bhalchandra Mankadrai Vaishnav, Electrical Inspector along with Mr. J.A. Bhatt and A.K. Memon went to appellant No.1 for the purpose of surprise checking because he had the information that the appellants were not only storing for sale, selling or distributing household electrical appliances but were also dealing in such goods of inferior quality, not satisfying the prescribed standards with required ISI marks. Purshottamdas Odhavrai was present at the shop. When PVC wire, three pin plug tops were checked, the Electrical Inspector, Mr. Vaishnav found that the name of the manufacturer and his address were not written on the goods and Quality Control Order Number was also not mentioned. He could also see that fact about certification made in favour of the manufacturer was being suppressed so as to misguide him and avert any legal action. The Factory Inspector, Mr. Vaishnav had a reason to believe that the appellants had stored the goods, manufactured by a person who had not obtained manufacturer's certificate. He therefore seized PVC wires and 3 Pin Plug Tops in the presence of the panchas and drew the Panchnama thereof. He putting the seized goods in the card-box went to his office. He kept the box in his custody and sent the same to the laboratory for necessary test, and to know whether the goods were conforming the standard quality. After carrying out necessary test, the laboratory found that the goods seized were not conforming the standard quality norms. Mr. Vaishnav then could know that the information he had received was quite true. The appellants and other partners of appellant No.1 had committed the breach of Clauses 4 & 6 of Household Electrical Appliances (Quality Control) Order, 1981 (for short, `the Order') issued under Section 3 of the Essential Commodities Act (for short `the Act') and thereby the appellants and other partners of appellant No.1 had committed the offence punishable under Section 7 of the Essential Commodities Act. A complaint with Kalupur police station, Ahmedabad was then lodged. After necessary investigation, the police filed the chargesheet in the Court of the Special Judge, City Sessions Court, Ahmedabad, which came to be registered as Special Case No. 12 of 1987.

3. On being served with the summons the appellants

and other partners appeared before the trial Court and pleaded not guilty to the charge. The prosecution then led necessary evidence. Appreciating the evidence before him, the then learned Special Judge found that the breach of Clause 4 of the Order was not established and so the charge in that regard was not proved. He therefore acquitted all the accused inclusive of the appellants of the same, but found that the present appellants had committed the breach of Clause 6 of the Order made punishable under Section 7 of the Act. The appellants, therefore, came to be convicted and sentenced as aforesaid. It is against that judgment and order, the present appeal is filed calling in question the validity & legality of the order of conviction and sentence.

4. At the time of hearing, Mr. Daksesh Mehta, the learned advocate, who appears for learned advocate, Mr. D.D. Vyas for the appellants submits that the requirement of Clause 6 of the Order is not satisfied. The learned Judge has overlooked this material aspect of the case and misdirecting himself reached the erroneous conclusion. In reply to such contention, Mr. S.T. Mehta, the learned APP submits that no error has been committed by the learned Judge. When the evidence on record is perused, it would appear that all the requirements of Clause 6 of the Order were satisfied. The goods in question were kept in the shop and ordinarily it can be assumed that when the traders keep the goods in the shop the same must be for sale.

5. As per Clause 6 of the Order, the shop owner, who deals in the storage, sale and distribution of the electrical appliances cannot store for sale or distribute household electrical appliance which have not been manufactured by a person who has obtained the manufacturer's certificate under Clause 5 or an Indian Standard Institution Certificate mark licence after appointed date and if he does it is made punishable. The prosecution has therefore to show that when the shop was inspected, the owner of the shop was found keeping the electrical goods for sale or distribution without ISI mark and the name of manufacturer who had obtained the aforesaid certificate also, failing which the prosecution cannot succeed. In order to prove the charge, Balchandra Markandrai Vaishnav is examined at Ex.21 and in support of his say, Jyotindra Anandprasad Bhatt, his Clerk is examined at Ex.33. The panchas, in whose presence the shop was inspected and abovestated goods alleged to have been exposed for sale were seized, are not examined. The Panchnama drawn does not throw light on the proposition, namely whether the goods were stored or exposed or kept

for the purpose of sale in the shop. The evidence of the abovestated two witnesses is not helpful to the prosecution. From their evidence, what can be deduced is that from the rear part of the shop, the goods seized were found. The same were kept in the rear portion because the same were treated to be the dead stock. It therefore follows that the goods were not kept for sale in the front portion of the shop. If at all the prosecution wanted to prove that those things were kept for sale in the shop, a bogus customer ought to have been sent, or the Inspector ought to have purchased the goods making payment and taking receipt thereof which would have certainly proved that the goods seized were kept for sale and were not treated to be the dead wood. Any of the persons purchasing such goods from the appellant prior to the inspection could have been examined but on that line investigation is not made and the prosecution has proceeded on assumption. It seems that soon after the order came into force the appellant withdrew the goods from sale-counter and consigned to the dead-stock room in the rear portion for sending back to the manufacturer or destroying the same, or disposing the same of otherwise. Before that could be done, the shop was inspected. The prosecution ought to have also seized the stock register in order to show that the goods kept were for sale and were not treated to be the dead stock. Thus when the requirement of Clause 6 of the Order is not established, the learned Judge was not right in convicting the appellants. He has overlooked this material aspect of the case and, misdirecting himself, drew the erroneous conclusions. In view of the matter, when one of the essential requirements is not established, the offence cannot be said to have been committed. The appellants are, therefore, required to be acquitted.

6. For the aforesaid reasons, the appeal is allowed. The judgment and order, convicting and sentencing the appellants, as aforesaid, are hereby quashed and set aside, and the appellants are acquitted of the charge levelled against them.

7. At present, the appellant No.2 is on bail. The bail bond executed by him stands cancelled. Fine if paid be refunded.

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